



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 13, 1998

Mr. Doyne Bailey
Administrator
Texas Alcoholic Beverage Commission
P.O. Box 13127
Austin, Texas 78711-3127

Letter Opinion No. 98-107

Re: Whether the Alcoholic Beverage Commission
may authorize the use of machines that dispense
alcoholic beverages by means of a PIN number
(RQ-1184)

Dear Mr. Bailey:

You have requested our opinion as to whether the Alcoholic Beverage Commission (the "commission") may authorize the use of machines that dispense alcoholic beverages by means of a PIN number. You explain:

We have been asked to approve the use of a vending machine designed to dispense individual containers of alcoholic and non-alcoholic beverages. The machine operates by electronic control, which can be programmed to limit access to alcoholic beverages in several ways. For example, access to the product is obtained through an individualized PIN number, much like automatic teller machines. The machine can be adapted so as not to dispense alcoholic beverages during prohibited hours and to limit the number of such beverages dispensed to an individual PIN number within a pre-determined period of time.

Section 51.09 of the Alcoholic Beverage Code provides: "Nothing in this chapter shall be construed as authorizing nor may the commission or administrator authorize the sale of any alcoholic beverage from a coin operated machine or similar device." Although the machine you describe is not a "coin-operated machine," its use may not be authorized by the commission if it constitutes a "similar device."

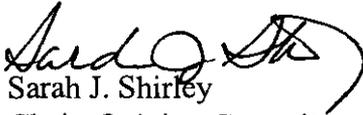
One Texas court has said that "similar" means "nearly corresponding; resembling in many respects; somewhat like; having a general likeness." *Guarantee Mut. Life Ins. Co. v. Harrison*, 358 S.W.2d 404, 406 (Tex. Civ. App.--Austin 1962, writ ref'd n.r.e.) (quoting WEBSTER'S NEW INT'L DICT. (2d ed.) (1947)); accord *Thomas' Estate v. Consumers Power Co.*, 228 N.W.2d 786, 790 (Mich. App. 1975), *aff'd in part, rev'd in part* by 231 N.W.2d 653 (Mich. 1975); *State Bd. of Med. Exam'rs v. Wagner*, 190 A.2d 557, 560 (N. J. Super. 1963). The term does not mean "identical." *Miller v. Allstate Ins. Co.*, 405 P.2d 712, 714 (Wash. 1965).

In our opinion, it is patently obvious that a machine that dispenses alcoholic beverages to a vendee in exchange for consideration—whether by credit card, PIN number, or in any other manner whatsoever—is sufficiently “similar” to a “coin-operated machine” to incur the statute’s bar. We conclude that the commission is prohibited from authorizing the use of a machine that dispenses alcoholic beverages by means of a PIN number.

S U M M A R Y

The Alcoholic Beverage Commission is prohibited by section 51.09 of the Alcoholic Beverage Code from authorizing the use of a machine that dispenses alcoholic beverages by means of a PIN number.

Sincerely,


Sarah J. Shirley
Chair, Opinion Committee